

DELTA PROTECTION COMMISSION

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**Draft Minutes
Delta Protection Commission Meeting
January 28, 1999**

1. **Call to Order/Attendance.** The meeting was called to order at 6:30 p.m. by Acting Chairman Steve Mello. Commissioners present were: Brean, Broddrick, Cabaldon, Calone, Canciamilla, Curry, Ferreira, Harris, McGowan, Mello, Nottoli, Potter, Salmon, Sanders and Yates. Commissioners absent were: Chairman McCarty and Commissioner Thomson.
2. **Closed Session Regarding Pending Litigation Pursuant to General Code Section 11126 (q)(2) and(3).** A closed session was held to discuss matters associated with possible litigation.
3. **Public Comments.** Ken Stewart, Director of the Contra Costa Department of Environmental Health, described a survey and outreach program to determine the need for pump-outs at marinas. They offered to work with other Delta Health Departments on this issue and to report back to the Commission. They distributed a copy of the draft survey to the Commission.
4. **Minutes of the November 19, 1998 Meeting.** On a motion by Commissioner Harris and a second by Commissioner Calone, the draft minutes were approved by voice vote; members who did not attend abstained from the vote.
5. **Chairman's Report, Including Resolutions of Appreciation for Former Commissioners.** Acting Chair Mello said the next meeting of the Commission is scheduled for Thursday, March 25, 1999 here in the Jean Harvie Community Center; tentatively scheduled for the March agenda is election of officers and discussion of the Cosumnes Preserve's plans for the lands near the confluence of the Mokelumne River and the Cosumnes River. He noted the upcoming California Duck Days sponsored by the Yolo Basin Foundation. Acting Chair Mello asked for motion for two draft resolutions of appreciation for Supervisor George Barber from San Joaquin County and Councilmember Gloryanna Rhodes from the San Joaquin Council of Governments. On a motion by Commissioner Cabaldon and a second by Commissioner Nottoli, the resolutions were approved by a voice vote. He directed staff to prepare a resolution of appreciation for Ross Sargent upon his departure from California and Senator Johnston's staff.
6. **Attorney General's Report.** There was no report.

7. **Executive Director's Report.** Ms Aramburu passed out a written copy of the Director's Report and reported: the Commission has received approval of a deficiency authorization for FY 98-99 from Department of Finance; the mailing packet included the Commission's proposed FY 99-00 budget; she said several grant programs are open including State Water Resources Control Board Watershed Grants, and Agricultural Drainage Management, and Wetlands Grants; CalTrans and the Resources Agency joint 11 million dollars for habitat land acquisition (Conservation Lands Program); LEGACI grants from the Great Valley Center; and Department of Conservation Agricultural Land Stewardship grants totaling \$13.6 million in grant funds for acquisition of conservation easements. Ms Aramburu noted release of a report entitled "State of the State's Wetlands"; and a Department of Boating and Waterways study of boat use on Delta waterways. She circulated a packet of materials developed to promote control of oily wastes from recreational vessels.

8. **Pending Projects Memo, Pending Category III Projects Memo, Legislative Update Memo.** Ms Aramburu noted staff had distributed three reports, all for Commission information, including: the pending projects memo; a new memo summarizing Category III ecosystem restoration projects and their status; and a memo describing new pieces of legislation which could affect the Delta.

9. **Briefing on Proposition 4 Regarding Prohibition of Leg Hold Traps.** Commissioner Broddrick reviewed the effects of the recently adopted proposition which prohibits the use of leg hold traps. He said the Department of Fish and Game is amending its regulations to come into conformance with Proposition 4. He said in the Delta there are a couple of typical trapping programs: commercial and for control. First, you must identify the type of animal being trapped. Fur-bearing mammals are generally trapped during a season. Control of mammals for non-commercial purposes through use of leg hold traps is no longer allowed, unless there is an imminent threat to public safety. He noted that the federal government has sued for relief from the proposition for the purpose of protecting endangered species on federal lands.

A member of the public asked what techniques are recommended; Commissioner Broddrick suggested use of a box trap and appropriate disposal of the animal; a suitcase trap is also acceptable. He outlined various options for disposal of various animals. He added that mouse and rat traps are excepted from the proposition.

10. **Commission Determination to Accept Proposed Conservation Easement from Thomas Luckey as part of a habitat enhancement project on Fern-Headreach Island in the Deepwater Ship Channel in San Joaquin County.**

Ms Aramburu reviewed the staff report.

Earl Cooley, representing Tom Luckey, made a brief presentation.

Commissioner Broddrick asked if the project is to be managed as a mitigation bank with a Corps of Engineer approval because that would complicate the Delta Protection Commission holding the conservation easement; Mr. Cooley said there are two phases--the Category III funded restoration project and the second is an enhancement project to be funded by other sources. Commissioner Broddrick suggested that the Commission be cautious about accepting a conservation easement for a mitigation bank project, because it is a more difficult transaction. Mr. Cooley suggested that the draft could be reviewed by the Department of Fish and Game.

Commissioner Calone asked the size of the island; Mr. Cooley said 158 acres. The levees are in need of repair, however, repair would require removal of the riparian vegetation. The island would be restored to permanent tidal wetland.

Acting Chair Mello opened the public hearing; there were no comments. The public hearing was closed.

Commissioner Nottoli moved that the Commission accept the conservation easement.

Commissioner Sanders asked the motion be amended to include Commissioner Broddrick's concerns and asked that State Lands Commission participate in preparation of a conservation easement. He suggested adding "after consultation with the State Lands Commission" to the staff recommendation in the second sentence; Commissioner Nottoli concurred with the amendment. The motion was seconded by Commissioner Sanders.

Commissioner McGowan asked if the final language would return to the Commission; Commissioner Nottoli clarified that his motion is to accept the concept as presented.

Commissioner Potter asked for the status of the project; Ms Aramburu said the project has been funded through a \$425,000 Category III grant in the May 1998.

Commissioner McGowan asked if there has been discussion with the County regarding conservation easements in the County; Ms Aramburu said no. He commented on the evolution of similar policies in Yolo County and asked that San Joaquin County be contacted and consulted.

Acting Chair Mello noted there must be a fall-back entity for the project, and suggested that be a local, rather than federal, entity.

Commissioner Nottoli tabled the motion until more information is presented to the Commission.

Acting Chair Mello directed staff to continue to work on the project and return in the future for Commission approval; Ms Aramburu said she would research the issues associated with mitigation banks; review by State Lands Commission; local policies regarding conservation easements; and the status of the project in the CALFED process.

Commissioner Broddrick emphasized that the Commission is supportive of the project and simply needs additional information.

Commissioner Potter noted that three members of the CALFED Policy Group sit on the Commission and asked if they need to abstain from Delta Protection Commission consideration of projects funded by CALFED grants.

11. Briefing on CALFED Revised Phase II Report and Ecosystem Restoration Program Plan by Dick Daniel of the CALFED Staff.

Ms Aramburu noted that the Commission had received excerpts from the Revised Phase II Report and a copy of the Executive Summary.

Dick Daniel noted that the notice for the next round of Category III grants will be released shortly, and said CALFED is directing applicants in the Delta to inform the Delta Protection Commission of application and to identify issues of concern. Those directions are optional and not mandatory.

Commissioner McGowan asked if the Commission should develop a comment form which would verify Commission notification and identify issues; Mr. Daniel said that would be very helpful. Mr. Daniel said he would work with staff on this matter.

Mr. Daniel said one of the most controversial aspects of CALFED has been the discussion of possible construction of an isolated conveyance facility to meet drinking water standards; the preferred alternative in the Phase II report is a through Delta conveyance with modifications of some channels to move water through the Delta more quickly at key times; source control upstream and in the Delta; and water management options which allow additional export during high flow periods and less exports during periods of low flow. CALFED will continue to study better treatment of water for human consumption, alternative sources of water (ie use of Sierra runoff for drinking water export), additional conveyance for the San Joaquin Valley to make the system work better, additional storage, and source control south of the Delta. CALFED will proceed with the basic program, and if additional actions are needed, CALFED will proceed on a staged basis. Only after all means are used and an independent panel reports to the Legislature that additional actions are needed would CALFED proceed with consideration of an isolated conveyance facility. Additional environmental review would be required.

Acting Chair Mello asked about source control in the Delta in relation to agricultural drainage; Mr. Daniel said areas of concern include: releases from Delta islands should be during periods of high flow or periods of low export; discharge of sewage from vessels; discharges from the existing treatment plants; and discharges of cannery wastes. Acting Chair Mello commented that the proposed time line is inadequate to construct and fully evaluate the Phase I improvements; Mr. Daniel agreed and said the independent panel would not make a determination until data is available, the Year 2003 evaluation would be an interim evaluation.

Mr. Daniel addressed the need to address diversion effect on Delta fisheries. He said a considerable amount of fish are being lost due to exports. In addition to habitat restoration, CALFED is looking at increased flexibility in water management (pumping) by using Valley sources, restrictions on harvest, focus on species on endangered lists, and more efficient water use throughout the State, especially in Southern California to reduce need for export. An environmental water account will be created to purchase and store water for release when needed to protect fishery resources. The water could be used to payback the exporters for not using the system pumps. He noted that reliance on the regulatory process tends to be more conservative. The water account would rely on real time monitoring and the water bank, and could be implemented as early as 1999.

Acting Chair Mello suggested that additional storage is needed to create water for a water bank; Mr. Daniel agreed and said storage south of the Delta could be used to store water pumped during high flow periods. CALFED will be seeking space in groundwater storage sites and MWD's new East Side Reservoir. Commissioner Harris asked the location and source of water for the East Side Reservoir; Mr. Daniel said it is in Riverside County and water would come from the Colorado River and the Delta.

Mr. Daniel said the revised Ecosystem Restoration Program (ERP), to be released shortly, outlines implementation in the first phase. A comprehensive monitoring program is under development, and a watershed plan is being refined. CALFED is developing a conservation strategy, which overlaps with the ERP, that will include "good neighbor" strategies. He said the ERP contains three corridors to be emphasized in addition to the mainstem Sacramento and the mainstem San Joaquin Rivers: North Delta Habitat Corridor in the Yolo Bypass; East Delta Habitat Corridor (Cosumnes River and Mokelumne River to Franks Tract and Sherman Island); and San Joaquin River Corridor (Mainstem San Joaquin River) which would really be isolated patches of habitat, not a true corridor (Fern Headreach, Mandiville Tip, McDonald Tip, Venice Tip, etc.). A fourth, long-range program, is habitat along a South Delta Corridor. He emphasized that CALFED is committed to finding opportunities for ecosystem restoration on publicly owned land in the Delta, such as enhancement of Franks Tract. There will be some exceptions that will not have an adverse effect on agriculture such as Fern Headreach.

Commissioner Curry mentioned the evaluation of recreational boating on the new East Side Reservoir associated with possible pollution of the water in the reservoir and associated concerns with recreational boating in the Delta, and asked for clarification of existing laws which preclude diminishment of recreational boating in the name of ecosystem restoration; Mr Daniel wasn't familiar with any such law. Mr. Siegel mentioned the public trust, but wasn't familiar with a specific law. Mr. Daniel agreed there are some areas of sensitive habitat which serve endangered species, and he noted that one of the many stressors on these sites is boat wakes. CALFED wants to work with the Department of Parks and Recreation and the Department of Boating and Waterways to possibly move boating activity to areas that are less sensitive. In addition, new opportunities will be developed in association with ecosystem restoration. In Franks Tract, there may be overnight camping facilities and in the East Delta Habitat Corridor, there may be non-

motorized boating activities and overnight camping. He suggested providing pumpout facilities and docking facilities to serve long-term mooring of houseboats. He suggested that the levee and habitat programs could allow new areas for use by active boaters. He said CALFED is required by State law to incorporate recreational opportunities into the program. Commissioner Curry asked Dan Siegel to advise the Commission at the next meeting of State laws which address impacts to recreational boating in the Delta.

Commissioner Potter noted that recreational boaters had opted to not participate in funding programs to maintain the Delta levees. He suggested participation would assist in developing broader support for recreational boating in the Delta. Commissioner Curry noted that a study is underway to help define boat wake impacts in the Delta.

Commissioner Salmon said he represents the South Delta on the Commission and noted that on page 9 of the Executive Summary there is an unacceptable paragraph which indicates that an isolated facility is still on the table. He said continued consideration of an isolated facility is unacceptable to the South and Central Delta. Mr. Daniel acknowledged the concerns of the South and Central Delta; CALFED has committed to a process which will use all available tools to address the health concerns identified, and only pursue an isolated facility if no other option is deemed adequate to protect public health, particularly in regard to the bromides issue.

Acting Chair Mello asked about other communities with high bromides; Mr. Daniel said there are probably estuarine areas, since bromides derive from ocean salts.

Commissioner Sanders asked what percent of export water is used for drinking water and what percent for agriculture; Commissioner Potter said about one-third of the total exported is used for drinking water (50% of State export waters and 15% of federal export waters). Mr. Daniel added that two-thirds of the State get some of their drinking water from the Delta, however, there could be exchanges of water from different sources.

Commissioner McGowan said he is appreciative of the changes in the program to date, and asked the status of the assurances package; Mr. Daniel said there are many ways to implement assurances such as limiting Prop 204 funding for ecosystem restoration until the final environmental document is approved; the Secretary for Resources must make an annual finding that all aspects of the program are proceeding; the conservation strategy--similar to a habitat conservation plan--will address endangered species issues; and there will be a new governing body to oversee the entire program. The mantra is still "everyone gets better together". Commissioner McGowan asked if the discussions about new reservoirs and conversion of agricultural land to habitat are both continuing; Mr. Daniel said there had been more discussion about creation of reservoirs than conversion of agricultural lands. He believes there will be some new storage, but probably not new, large, on-stream reservoirs.

Commissioner Potter noted that storage was a key issue in discussion's over last year's Water Bond, however, the Legislature did appropriate \$10 million for the Department of Water Resources to study surface storage in Northern California.

Jack Williams asked if wells would be regulated under the CALFED program; Mr. Daniel said regulation of extraction of groundwater is being considered by the Legislature.

12. Briefing and Public Hearing on Proposal of U.S. Fish and Wildlife Service to Create a North Delta National Wildlife Refuge.

Ms Aramburu made comments thanking the Service for offering to come and present a briefing on the proposed North Delta refuge. The Commission, of course, has no authority over this federal project, so the briefing and any comments the Commission makes on the project are advisory only. She said there has been a little confusion around the term "public hearing" in the context of this federal project. This is not a US Fish and Wildlife Service public hearing, or part of the federal project review process, or the NEPA process. The term "public hearing" was used to let members of the public know they are invited to attend and to present comments to the Commission on topics or issues of concern. She apologized for any confusion that might have occurred due to use of the term "public hearing" and said the project review was based on the process adopted by the Commission last July for the review of CALFED ecosystem restoration projects--in that process, the Commission will agendaize a project, receive public comments, and then forward the results of that review to CALFED staff. To avoid any confusion between the federal definition of a "public hearing" and the term as used by the Commission, she suggested the following format: first, staff of the Service will make a presentation on the proposed North Delta Refuge and answer questions of clarification from the Commission; the Commission will open a public comment period, and then will discuss the proposed project amongst themselves. Finally, the Commission will make suggestions to the Service about issues to be addressed in the upcoming environmental document, or refuge section process. She suggested if members of the public have specific questions, rather than comments, those questions should be directed to the Service staff through the environmental review process, at a public meeting sponsored by the Service, or they can communicate directly with the Service staff.

Ms Aramburu said the proposed North Delta Refuge has been under consideration for some time. The Service held two public meetings last year, and has made presentations to the Solano County and Yolo County Boards of Supervisors. The Service will be releasing an environmental document soon, and the Service will hold at least one more public meeting on the project after the release of the environmental document.

Ms Aramburu added that the Prospect Island habitat restoration project is proceeding under a separate environmental document prepared by the Corps of Engineers on lands owned by the Bureau of Reclamation. The Prospect Island issue in the context of the North Delta Refuge is whether the Service should assume management responsibilities for the project after it is constructed. The Commission received a briefing on this project in June of 1995. At that time,

Commissioner comments focused on the costs of the proposed alternatives and possible impacts to neighboring landowners, such as seepage. Delta Protection Commission staff comments on the draft negative declaration include: questions about recreation opportunities; evaluation of conversion of agricultural land under the Farmland Protection Policy Act; possible impacts to adjacent lands due to seepage; and need for buffers between new habitat areas and existing agricultural areas. The negative declaration has not yet been approved.

Ms Aramburu said the Commission adopted comments on the CALFED Draft ERPP which suggested emphasis on (1) Restoration and/or enhancement of lands currently in public and/or nonprofit ownership (or currently in the acquisition process) and designated for restoration; (2) Acquisition and/or enhancement of currently flooded lands to create and/or enhance emergent habitat; (3) Protection, enhancement and restoration of in-channel islands and waterside berms; (4) Development and implementation of individual management plans for private agricultural properties; and (5) Development and implementation of individual management plans for privately-owned lands managed for wildlife habitat, such as duck clubs and upland hunting clubs.

The study area of the proposed North Delta National Wildlife Refuge includes many lands which match these criteria including: publicly owned lands on Prospect Island; flooded lands such as Little Holland Tract; and duck clubs and upland hunting clubs such as the several thousand acres of duck clubs in the Yolo Bypass and the upland hunting club on Hastings Tract.

In addition, Ms Aramburu said last fall the Commission reviewed the proposal of the Ad Hoc Delta Group which outlined an alternative proposal for the CALFED Ecosystem Restoration in the Delta to focus on (1) Public and non-profit lands currently managed for ecosystem values in the Delta; (2) Private lands with conservation easements (such as duck clubs in the Yolo Bypass); (3) Public lands in the Delta not actively managed for ecosystem values (Prospect Island; eastern tip of Hastings Tract; southern tip of RD 2098); and (4) Private lands subject to flowage easements in the Yolo Bypass.

Ms Aramburu said after the public meeting last July, Delta Protection Commission staff submitted a letter to the Service suggesting the following issues be evaluated in the environmental document: the relationship to the CALFED program; flood issues in the Yolo Bypass; issues associated with conversion of agricultural lands to habitat; impacts to local government revenues; recreation opportunities; and proposed management of the new refuge.

Tom Harvey, Refuges and Wildlife Director since 1993, described regional efforts on-going in the Delta area including the Central Valley Habitat Joint Venture, the CALFED ERP, and projects in the Yolo Bypass. He described the core area include Prospect Island, Little Holland, and Liberty Island, and noted that after the Corps enhances Prospect Island, it would be passed to the Service for long-term management; that negotiations for the Corps to acquire Little Holland have been underway for some time; and that the Service has received a grant from CALFED to acquire Liberty Island. He said the proposed refuge would carry out many of CALFED's goals and the

Service hopes to continue agricultural uses on many areas, with lands used for grazing and growing small grains. He noted there would have to be a separate environmental document for restoration of Liberty Island and the Service would need to address minimizing impacts to neighboring landowners. He described the management of Stone Lakes and how that approval process included control of water hyacinth, the development of a beneficial grazing program on County-owned lands, and an agreement with the Mosquito Abatement District. He said the Service is committed to paying the required share of reclamation district assessments through a cooperative agreement. He said the Service promotes public uses such as hunting, fishing, wildlife observation, and education, and said a public use plan would be prepared after the environmental document is approved.

Commissioner Calone asked what impacts there would be to public hunting and to the existing private duck clubs; Mr. Harvey said if included, the existing duck clubs would stay as is; he noted that there will probably be hunting allowed at Prospect Island and the Service may not be able to restrict access by boats which would allow hunting and fishing.

John Castellano, Biologist and Planner with the Service, described the history of the refuge project. The Preliminary Project Proposal was approved in 1997, public meetings were held in March and July of 1998, with the final alternatives being evaluated in the environmental document. He said the study area has been reduced and the largest alternative is now 42,000 acres (Hastings Tract and areas near Rio Vista have been deleted). He said the project must have no effect on the flood control values of the Yolo Bypass and must have no impacts to endangered species. He noted that the larger the refuge, the larger the opportunity to restore habitat and enhance endangered species. He reviewed the review process to come: release of a draft environmental assessment, an additional public meeting, then selection of a final plan. He said there is no identified preferred alternative; the Service is waiting for public comment. He noted that a consultant has been retained to prepare a special evaluation of the proposed refuge's impacts on the regional agricultural economy.

Acting Chair Mello asked about possible impacts to property taxes; Howard Stark outlined the responsibility of a refuge and noted that actual payment of funds to local governments to offset loss of property taxes is subject to appropriation of funds by Congress. Acting Chair Mello asked about the fiscal impacts to reclamation districts; Mr. Stark said the socio-economic issues will be analyzed by a consultant and addressed in the environmental document. He said the San Joaquin Refuge has worked well with reclamation districts. Mr. Harvey added that it would be unfair to create a burden on neighboring landowners and an arrangement will have to be worked out to address this issue.

Commissioner Nottoli asked additional questions about the in-lieu payments to local government; Mr. Stark said the consultants' report will clearly address the fiscal impact issues, and added that the refuges pay 67% of entitlements, not 67% of property taxes.

Commissioner Cabaldon asked what criteria will be used to determine the preferred alternative; Mr. Castellano said a team of biologists, planners and consultants will evaluate the ecosystem needs and the ecological benefits associated with the proposed alternatives. He said the issues of funding and manageability will also be considered. Commissioner Cabaldon said his City is adjacent to the north Yolo Bypass and Vic Fazio Yolo Wildlife Area, and he is working on the Flyway Education Center; he asked since a larger refuge would clearly have more ecological benefits, what could lead to the Service to a smaller alternative; Mr. Castellano said the issues of Delta fish entrapment and fish habitats would be important, and there would be fewer benefits for the Giant Garter snake and the long-horned elderberry beetle. He said issues of funding and manageability, operation and maintenance would be analyzed.

Commissioner McGowan said Yolo County has been preparing a habitat conservation plan and asked why Yolo County would need such a plan if this project goes forward since the Service is going to mitigate 42,000 acres; Mr. Castellano said an HCP is designed to mitigate for impacts of private development. Commissioner McGowan said the HCP requires one to one mitigation but only about 25,000 acres in the County are proposed for development; the refuge proposal is for much more habitat than can be developed in Yolo County; Mr. Castellano said the Service will be discussing this issue with the County. He said the new regional manager, Mike Spear, wants the refuges to conserve and manage threatened and endangered species, a different view from the past when refuges were seen as large duck clubs. Commissioner McGowan said it sounds as if the efforts will be duplicative; Mr. Castellano said the refuge may be able to provide sites for mitigation. Commissioner McGowan asked if the Service has met with Yolo County Planning Department; Mr. Castellano said the Service is required to work closely with the planning departments, as well as the Boards of Supervisors. He will be obtaining the general plans and zoning ordinances for the areas in the study area, and would return to the Yolo County Board of Supervisors. Mr. Harvey added that the Service has met with planning staff and some of the Planning Commissioners; he hopes that the refuge acreage in grazing land and in small grains could count toward the goals of the Yolo County's HCP. He said he needs to work with the HCP staff at the Service to address these matters. Commissioner McGowan noted that the County HCP has been under preparation for several years under the direction of the Service.

Commissioner Broddrick agreed with the concerns for the Yolo County HCP, however the HCP does not include aquatic species, and thus refuge should be complementary and not duplicative. The refuge cannot be used to substitute for the HCP. He said that the HCP south of I-80 could pick up a lot of the values that need to be protected.

Commissioner Cabaldon said that the refuge acquisition could lock up much of the lands that would be suitable and needed for the conservation easements needed for the HCP. He questioned the need to mitigate for new development if the Service and CALFED will be enhancing thousands of acres of habitat in the Delta. Mr. Harvey said selection of an alternative does not mean those lands are in the refuge, those same lands could be acquired for the HCP and be within the boundary of a refuge. It would not be feasible to have mitigation on Service-owned lands.

Commissioner Curry asked about public use and access in a refuge; Mr. Harvey said it is too early to know exactly what type and level of public use will be provided, those uses would be defined in a public use plan prepared with public input. He said that expansion of navigable waterways would likely result in expansion of boating, possibly restricted at critical times or to certain types of boats. He listed types of wildlife compatible recreation and said they were identified in recent legislation which says that refuge management plans must be prepared for each refuge. A team of five planners will be preparing plans in the Valley in the next 15 years. He said that as a manager it is important to provide continuity for the refuges and their management.

Commissioner Ferreira asked questions about hunting in Stone Lakes; Mr. Harvey said it is not allowed now because the Refuge only owns and manages about 1,000 acres--one is too close to the freeway and the old Lodi Gun Club is not big enough for a public hunting program, in contrast to the historic private hunting use. Commissioner Ferreira said he is concerned that the hunting use seems to be postponed and is not allowed; Mr. Harvey said he is working to put a hunt program together at Stone Lakes.

Commissioner Ferreira asked if there are conditions about acquisition and retirement of agricultural land if CALFED funds are used; Mr. Harvey said he is not aware of that type of restriction on CALFED funds. Dick Daniel said CALFED ERP does not have a policy of no net loss of farm land--that would not be possible. He said that CALFED supports acquisition of conservation easements and enhancement of wildlife friendly agriculture as an alternative to acquisition and retirement of agricultural lands.

Acting Chair Mello opened the floor to public comments.

Geneal Chima, spoke on behalf of the Liberty Island landowners, said the island has been farmed two out of the last five years due to flooding and restrictions on repair work. He said the property taxes have not been paid for three or four years and the flooding has been a hardship. He said the profit margin in farming is small, and the owners of Liberty have had to spend millions of dollars repairing the levees. The landowners believe the highest and best use of the land is for habitat enhancement. To help these landowners, they should get a break on their property taxes.

Tom Hester, representing Ryer Island-RD 501 east of Prospect Island, said Prospect has been flooded for the last two years. He said that flooding of Prospect Island results in seepage on Ryer Island which could affect the stability of the levees and is making some areas on the island unfarmable. He said that one year ago the Corps asked Ryer about their concerns, and the Corps has now responded. The Corps hired a hydrologist to study this issue and the hydrologist reported in a document dated May 1998 that the elevation of lands in the vicinity of Miner Slough is controlled by Miner Slough and is not affected by the flooding on Prospect. The report did not mention that there is a levee break and Prospect is fully affected by tidal waters in Miner Slough. He said that questions about endangered fish species, fish screens, and water quality issues were largely unanswered. He said the issues associated with the Prospect Island project could be repeated on other sites and could affect other neighboring landowners.

Chris Neudeck, KSN, said the primary issue of concern to RD 501 is the seepage issue and the Corps' resistance to gathering appropriate scientific data and reviewing existing data.

The public hearing was closed.

Commissioner Salmon said during the drought farmers were paid to not farm and there were allegations of tremendous economic impacts to the communities; in the current scenario, land would be permanently retired from agriculture which could result in major economic impacts to Delta communities.

Commissioner McGowan asked what is the role of the Commission in this project since the Commission can only be advisory; he is concerned about the balance between the federal government's goals and objectives and the local governments' and local interests' input--he believes these are local land use issues that are paramount to the national plans for habitat restoration. He said the federal view is that restoration of habitat is paramount to preservation of agriculture as an industry and way of life. He said the local governments should be more involved in the development of these projects so they reflect local concerns.

Commissioner Calone asked what the Commission can do.

Ms Aramburu said the Commission has offered to provide a forum for discussion of the project and that discussion has been broad and has identified several issues that need to be balanced in the review of the project.

Commissioner McGowan asked for review of the Commission's authority over projects and asked for analysis from legal counsel. He said he is not ready to assume that local government has no authority over this project and says the Commission has not tested the extent of its legal authority. Dan Siegel said the Commission has two types of authority: first, to adopt the regional plan and ensure that the local governments's plan are consistent; and second, that the local government actions can be appealed to the Commission. He said there is no regulatory authority unless there is a federal law which requires conformance with local or State law.

Commissioner Cabaldon said he would not support sending a letter based on the discussion at the meeting and suggested that the Commission agendaize the matter for action at a later meeting to provide comments to the Service and to the Secretary for Resources. He noted that while the Commission may not have authority over the proposed federal project, the Commission could submit comments on behalf of the Delta.

Mr. Castellano said they do listen to comments from the community and would be more than willing to come back to a later meeting to present the finding of their consultants' report prior to release to the public.

Ms Aramburu said she would prepare a letter summarizing the outstanding issues discussed at the meeting, without identifying a position on the part of the Commission, including: recreation, impacts to other habitat programs, local fiscal impacts, local regional economic impacts, and impacts to adjacent and nearby lands (seepage and fish screens). Acting Chair directed staff to prepare such a letter without a position on the project, and asked that the project return at a later date when more specific information is available..

Commissioner Brean said he thinks it is early in the planning process and while its important to clarify the outstanding issues associated with the proposed project, the Service's goals overlap with the goals of the Commission. He noted that any possible conflicts with the Commission's goals won't be known until later in the planning process.

Jack Williams asked if the Commission is aware of and will take a position on a proposed gas pipeline in the Lodi to Central Delta area; Acting Chair Mello said he is aware of the project.

13. Commission Review and Possible Adoption of Draft Annual Report for 1998

Ms Aramburu noted she had received some minor corrections from Acting Chair Mello and asked for other corrections to be submitted to staff through the following Monday. The final draft will be reviewed by the Chair.

Commissioner Potter suggested that the annual report to the Legislature be amended to include information on the need to continue funding the Delta levee maintenance program; all funding from the program will end July 1, 1999. Ms Aramburu agreed to add that information.

On a motion by Commissioner Cabaldon and a second by Commissioner Nottoli, the draft annual report was adopted.

14. Possible Amendments to Delta Protection Act.

Ms Aramburu noted that the two term limit issue was carried over from the November agenda. The issue of term limits--the Act currently restricts Commissioners to two, four-year terms--could impact the County Supervisors who must represent a Supervisorial District in the Primary Zone. A possible second amendment would address the issue of conformance with the Administrative Procedures Act. The staff of the Office of Administrative Law has indicated that other policies in the Commission's Plan may be vulnerable to the kind of lawsuit brought against the Commission regarding Utilities and Infrastructure Policy P-3.

Supervisor Nottoli said elimination of term limites does not preclude turnover.

Commissioner Calone noted that the Reclamation District representatives must live in the Legal Delta; Ms Aramburu said she researched that issue and there is a large pool of eligible candidates; there has been no recommendation to delete the residency requirement.

Commissioner Salmon asked if there had been discussion with Senator Johnston; Ms Aramburu said she had talked to his staff and he would be willing to carry changes if the Commission so desires.

Commissioner Nottoli supported deletion of the two-term limit.

Commissioner Cabaldon agreed that the deletion of the two-term limits is appropriate for the County Supervisor seats and noted that the cities are somewhat at a disadvantage because they do pass the seat on to other cities and have less institutional memory. He said the term limits and turnover does not need to be codified in State law.

On a motion by Acting Chair Mello, and a second by Commissioner , the Commission voted unanimously by voice vote to seek support of amendments to State code to eliminate the two term limit and to amend the Administrative Procedures Act to address the Commission's plan.

15. Request for Commission to Sponsor Legislation to Amend SB 172, Abandoned Watercraft Abatement Program.

Ms Aramburu said Senator Rainey has asked the Commission to sponsor legislation to create minor technical amendments in the grant program, administered by the Department of Boating and Waterways, which allows local governments to remove abandoned recreational vessels from the State's waterways. Senator Rainey has asked the Legislative Counsel's office to evaluate the need for the legislation.

Acting Chair Mello moved approval of Commission sponsorship of the legislation if needed, the motion was seconded by Commissioner Calone and approved unanimously by voice vote.

Commissioner Cabaldon asked if there are proposed changes to the fund; Ms Aramburu said there would be no changes to the funding or the location of the fund.

16. Commissioner Comments/Announcements. There were no comments.

17. Adjournment. The meeting was adjourned at 10:30 p.m.